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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )

) MUR 4783

Brian Babin for Congress )

and Thomas E. Freeman, as treasurer )

**CONCILIATION AGREEMENT**

This matter was initiated by a signed, sworn, and notarized complaint by Peter Cloeren.

The Commission found reason to believe Brian Babin for Congress and its treasurer

("Respondents") violated 2 U.S.C. §§ 441b(a), 441f and 434.

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.

§ 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Dr. Brian Babin was a candidate for U.S. Representative in Texas' Second District during the 1996 Primary, Run-Off and General Elections.

2. Brian Babin for Congress is the principal campaign committee of Dr. Babin, and a political committee within the meaning of 2 U.S.C. § 431(4).

3. Thomas E. Freeman is the treasurer of Brian Babin for Congress.

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4. The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits a corporation from making a "contribution or expenditure" in connection with any Federal election, and prohibits any political committee from knowingly accepting or receiving any such contribution. 2 U.S.C. § 441b(a).

5. The term "contribution or expenditure" shall include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any" Federal election. 2 U.S.C. § 441b(b)(2). *See also* 2 U.S.C. § 431(8)(A)(i).

6. Under the Commission's regulations, a candidate committee must pay, in advance, the usual charter cost for use of an airplane if any person travels on behalf of the candidate using an airplane leased by the corporation, and the corporation is not licensed to offer commercial travel services. *See* 11 C.F.R. § 114.9(e).

7. The Act also prohibits: (1) making a contribution in the name of another; (2) knowingly permitting one's name to be used to effect such a contribution; and (3) knowingly accepting such a contribution. 2 U.S.C. § 441f.

8. Contributions that present genuine questions as to whether they were made by legal sources may be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(1). If any such contribution is deposited, the treasurer shall make his or her best efforts to determine the legality of the contribution. 11 C.F.R. § 103.3(b)(1). If the treasurer determines that at the time a contribution was received and deposited, it did not appear to be made by a corporation or in the name of another, but later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer

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shall refund the contribution within 30 days of the date on which the illegality was discovered.

11 C.F.R. § 103.3(b)(2).

9. All contributions, including contributions in-kind, must be reported by the candidate's authorized committee according to the terms of 2 U.S.C. § 434.

10. On June 24, 1998, Peter Cloeren and Cloeren, Inc. pled guilty in U.S. District Court for the Eastern District of Texas to misdemeanor violations in connection with having made \$37,000 in corporate contributions in the name of others to Brian Babin for Congress. On or around this same date, Brian Babin for Congress received notice of Mr. Cloeren and Cloeren, Inc.'s guilty plea, including the fact that it possessed \$37,000 in illegal corporate contributions made in the name of others.

11. On or around August 17, 1998, Brian Babin for Congress disgorged \$37,000 to the Bureau of Public Debt, approximately 54 days after first learning that it possessed the illegal funds. By not refunding or disgorging the funds within 30 days of learning they were illegal, Brian Babin for Congress accepted prohibited contributions.

12. On August 29, 1996, U.S. Representative Thomas DeLay flew in an airplane from Sugar Land, Texas to Orange, Texas, to attend a Babin campaign event. Cloeren, Inc. paid Mid-Coast Charter for the flight by check dated October 1, 1996, in the amount of \$1,320. The payment for the flight constituted an in-kind corporate contribution from Cloeren, Inc. to Brian Babin for Congress. By a check in the same amount, dated July 31, 1998, Dr. Babin reimbursed Cloeren, Inc. for payment of the flight.

13. On September 14, 1996, Dr. Babin flew in an airplane from Jacksonville, Texas to Orange, Texas to attend a Babin campaign event at the residence of Peter Cloeren. The airplane was privately owned by Warren Landry, who was also the pilot. In a letter to Dr. Babin,

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dated August 20, 1998, Mr. Landry states that there was no charge for the flight, which he values at \$135.00. By letter dated February 15, 2000, which was received by the Commission on February 16, Brian Babin for Congress amended its 1996 reports to include Mr. Landry's in-kind contribution.

14. Concerning the activities described above, the Commission made no findings that Respondents acted knowingly and willfully. After receiving notice of the violations, Respondents disgorged or refunded all illegal contributions and amended their disclosure reports. *See supra* ¶¶ 10-13.

V. 1. Respondents accepted \$37,000 in illegal contributions from Peter Cloeren and Cloeren, Inc. that were made in the names of other persons, in violation of 2 U.S.C. §§ 441b(a) and 441f.

2. Respondents accepted an in-kind corporate contribution in the form of an August 29, 1996 flight paid by Cloeren, Inc., in violation of 2 U.S.C. § 441b(a).

3. Respondents untimely reported an in-kind contribution in the form of a September 14, 1996 flight in an airplane owned by Warren Landry, in violation of 2 U.S.C. § 434.

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Six Thousand Seven Hundred dollars (\$6,700), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

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VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lois G. Lerner  
Acting General Counsel

BY:

Abigail A. Shaine

Abigail A. Shaine

Acting Associate General Counsel

3/21/01

Date

FOR THE RESPONDENTS:

Bryan G. Gilly

(Name)

(Position) Counsel

2/28/01

Date

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